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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Ken Dubuc

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09/26/2008

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EXAMINER

WONG, BLANCHE

ART UNIT

PAPER NUMBER

2619

MAIL DATE

DELIVERY MODE

09/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/998,504	DUBUC ET AL.	
	Examiner	Art Unit	
	Blanche Wong	2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-11 and 13-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-11, 13-20, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 21-25 and 28-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Examiner clarifies that the last Office Action, dated February 7, 2008, is non-final. Para. 8 in the Office Action is a typographical error.

Response to Arguments

2. Applicant's arguments filed June 12, 2008 have been fully considered but they are not persuasive.

Applicant takes the tactic of disparaging the Examiner. (Response, p.9, para. 4) Specifically. Applicant points out that three previous non-final Office Actions have been issued in the present application. (Response, p.9, para. 4) Applicant further states that the Examiner has not explained how the Examiner now concludes the claims contain subject matter not described in the Specification in such a way as to enable one skilled in the art to make and/or use the invention after apparently concluding opposite in the three previous attempts. (Response, p.9, para. 4) With regard to claims 1 and 10, Applicant submits the Examiner appears to be reading limitations into the claims. (Response, p.10, para. 4 and p.11, para. 1) Finally, with regard to claims 19-33, Applicant "does not see ... any indication that 'great care' was 'exercised in authorizing such a rejection'" (Response, p.13, para. 1)

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically

pointing out how the language of the claims patentably distinguishes them from the references.

The three non-final Office Actions are justifiable. Examiner notes that after the first Office Action, Applicant argued patentability without claim amendments. Then Examiner took the approach of overcoming Applicant's argument by showing new ground(s) of rejection which clearly better explain the prior art because Applicant subsequently amended the claims. However, Examiner was diligently working toward the allowability of the claims and found new 112 rejections due to the latest amendments. Even if the prosecution takes another round of non-final Office Action, the non-final Office Actions are justified by Examiner's due-diligence.

Agreeably, amended claims should not introduce new rejections. However, e.g. with regard to Applicant's latest amendment to the claim 1 on November 19, 2007, Applicant introduced "the second service interface operatively coupled to the plurality of transport interface" in lines 13 where there is already "a plurality of transport interfaces operatively coupled to the [first] service interface" in line 6. It follows that Examiner reviews the enlarged scope of the claim involving a first and second service interfaces and found that the amendment is non-enabling because the structural connection between the first and second service interfaces [within a first and second nodes respectively] is missing. Examiner explained in the 112,1st rejection that there is a plurality of nodes and each node has a service interface and a plurality of transport

interfaces, as seen in Fig. 1, but the order of the service interface and its respective plurality of transport interfaces within a node depend upon the placement of the node in the system. For example, in node 101, service interface comes before transport interfaces, whereas in node 102, transport interfaces comes before service interface. There are two plurality of transport interfaces with respect to the two nodes.

With regard to claims 1 and 10, Examiner is not attempting to read any limitations in the claim. Examiner is just trying to make sure the claims recite the invention.

With regard to claims 19-33, new art was introduced for rejection of independent claims 19 and 26. Thus, the indicated allowability could be withdrawn.

3. With regard to claims 19-33, Applicant states that the reference pertains to networks and does not disclose or suggest a class of service. (Response, p.13, para. 2)

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. **Claims 1,4-11,13-18** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

With regard to claim 1, claim 1 recites "... a plurality of transport interfaces operatively coupled to the service interface ... the second service interface operatively coupled to the plurality of transport interfaces" However, neither Fig. 1 nor the Specification discloses the same set of the plurality of transport interfaces shared by the service interface and the second service interface. Specifically, the Specification discloses in Fig. 1: "The apparatus includes a first node 101, and second node 102 ... The first node 101 comprises a service interface 104, ... and transport interfaces 110, 113, 116, and 119. Node 102 comprises a service interface 105 ... and transport interfaces 111,114,117, and 120. ..." There are at least two sets of nodes, at least two service interfaces, and at least two plurality transport interfaces. Moreover, for example, a second service interface in a second node is operatively coupled to a second plurality of transport interfaces. Therefore, claim 1 fails to comply with the enablement requirement because one skilled in the art is unable to provide for a second node or a second plurality of transport interfaces.

Similarly, with regard to claim 10, claim 10 recites “receiving the data packets at a service interface ... routing the data packets to transport interfaces ... receiving at a second service interface the data packets from the transport interfaces.” However, neither Fig. 1 nor the Specification discloses the same set of the plurality of transport interfaces shared by the service interface and the second service interface.

Specifically, the Specification discloses in Fig. 1: “The apparatus includes a first node 101, and second node 102 ... The first node 101 comprises a service interface 104, ... and transport interfaces 110, 113, 116, and 119. Node 102 comprises a service interface 105 ... and transport interfaces 111, 114, 117, and 120. ...” There are at least two sets of nodes, at least two service interfaces, and at least two plurality of transport interfaces. Moreover, for example, a second service interface in a second node is operatively coupled to a second plurality of transport interfaces. Therefore, claim 10 fails to comply with the enablement requirement because one skilled in the art is unable to provide for a second node or a second plurality of transport interfaces.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 1,4-9** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 1, it is unclear how/why “a differentiated service profile [is] associated with the service interface” in lines 5 but “a second differentiated service

profile [is] operatively coupled to the second service interface" in lines 12-13, or whether there is a difference between "associated" and "operatively coupled".

With regard to claim 5, it is unclear whether "the differentiated service profile" in line 3 is the second differentiated service profile because claim 5 recites "the second service interface" in line 1 and the second service interface is associated with the second differentiated service profile, not "the differentiated service profile".

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. **Claims 19,20 and 26,27** are rejected under 35 U.S.C. 102(e) as being anticipated by Kuykendall, JR. (US 2002/0181044).

With regard to claims 19 and 26, Kuykendall Jr. discloses **(Fig. 4)**

a service interface **(hub location 16 and enterprise switch 40 in Fig. 4)** **(See A/so translator capability 40, para. [0087])** for carrying the data packets, wherein the data packets have a plurality of the classes of service **(circuit switched, IP telephone, ISP backbone, CATV, 19-22 in Fig. 4)**;

transport interfaces (**Local Exchange Carrier Regional Switching Center, ISP Regional Peering Node, CATV Regional Network distribution center, 10,11,12 in Fig. 4**), carrying subsets of the data packets wherein the classes of service of the subsets of the data packets carried by the transport interfaces are unique (**circuit switched, IP telephone, ISP backbone, CATV, 19-22 in Fig. 4**) to each of the transport interfaces.

With regard to claims 20 and 27, Kuykendall Jr. further discloses the transport interfaces (**Local Exchange Carrier Regional Switching Center, ISP Regional Peering Node, CATV Regional Network distribution center, 10,11,12 in Fig. 4**) are operably coupled to the service in bundles (**all going into enterprise switch 40 in Fig. 4**), each bundle having exactly one of the transport interfaces for each of the classes of service (**circuit switched, IP telephone, ISP backbone, CATV, 19-22 in Fig. 4**).

Allowable Subject Matter

10. Claims 21-25 and 28-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edan Orgad can be reached on 571-272-7884. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blanche Wong/
Examiner, Art Unit 2619
September 17, 2008

/Edan Orgad/
Supervisory Patent Examiner, Art Unit 2619